

## The complaint

Mrs K is unhappy with the quality of a car supplied to her under a hire agreement with Lex Autolease Limited. She also complains about the amount of money that was refunded to her after the agreement was terminated.

## What happened

In October 2021 Mrs K entered into a hire agreement with Lex for a new car. Under the terms of this agreement, she was required to pay an initial rental of £2,948.26, followed by 47 monthly rentals of £491.38.

Mrs K says she had a number of problems with the car after it was delivered to her on 29 October 2021. She provided a timeline of these events, which I'll summarise:

Date	Problem	How resolved
29 November 2021	Window stuck in the open position	One week at the garage
9 December 2021	Wouldn't start due to malfunction	Fixed by breakdown service
20 January 2022	Engine cut out due to malfunction	Restarted after 10 minutes
22 January 2022	Engine cut out due to malfunction	Restarted after 10-15 minutes
22 January 2022	Engine cut out due to malfunction	Car rejected

Mrs K told us that she was in the middle lane of a three-lane dual carriageway the last time the vehicle cut out. Fortunately, she was able to manoeuvre to the side of the road. But Mrs K says she found this situation very upsetting and believes she could have been seriously hurt. She says the car was recovered to a garage by the police after around three hours.

Mrs K raised a complaint to Lex, saying she didn't want to drive the car again. But on 4 February 2021 she was told the car had been repaired. She says she was told she needed to collect the car, or she'd be charged for continuing to use the courtesy vehicle.

On 7 February 2022 Lex issued a final response, supporting Mrs K's right to reject the car. They said they'd terminate her contract at zero cost and refund the unused portion of the initial rental payment. They paid Mrs K £300 to recognise the inconvenience she'd experienced, plus a loss of enjoyment payment of £67.85 for having to use a courtesy car for three weeks. Lex later paid Mrs K another £100 to cover the cost of petrol for the courtesy car they'd provided.

The car was collected from Mrs K on 28 February 2022, by which time it was noted to have travelled 1,416 miles. Lex then sent Mrs K a refund of £2,200.96 for the unused portion of the rental payments. Unhappy with this, Mrs K asked our service to look into her complaint.

Our investigator explained that the initial rental payment had included a spread payment of £2,456.88, which reduced the monthly payments by £51.18. He said Lex had advised an error had been made when calculating the number of spread payments to be deducted from the amount to be refunded – and that they'd be sending Mrs K a further cheque for £51.18 for this.

The investigator thought it was reasonable for Lex to charge Mrs K for the periods they'd provided a car for her use. But he thought it would be fair for a small proportion of the rental payments to be refunded, to reflect the fact that the courtesy cars hadn't been to the same specification. He said he wouldn't expect Lex to provide a courtesy vehicle after the car had been collected, as the agreement was no longer active at that point. He felt Lex's refund of £467.85 fairly recognised the distress and inconvenience caused to Mrs K.

The investigator didn't think it would be fair to ask Lex to pay for the charging point that had been installed for this car, as this was something Mrs K had chosen to do and may provide a benefit in the future. And he didn't think Lex should be asked to refund the cost Mrs K had paid to the broker, as this was a service she'd received and was outside of Lex's control.

Mrs K remained unhappy with the final settlement from Lex. She said she didn't understand why her initial payment of £2,948.28 hadn't been returned to her in full - and felt she was still out of pocket by £204.76. Mrs K didn't consider the amount of compensation Lex had paid to be enough for the stress and aggravation she'd suffered. She asked for an ombudsman to make a final decision on her case.

### **My provisional decision**

I issued a provisional decision, saying:

*Mrs K's complaint is about a car supplied under a hire purchase agreement. Entering into consumer credit contracts like this as a lender is a regulated activity. So, I'm satisfied I can look into Mrs K's concerns about Lex.*

*When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 (CRA) is relevant to this complaint. The CRA says under a contract to supply goods, the supplier – Lex in this case – has a responsibility to make sure the goods are of satisfactory quality.*

*Lex agreed the car they supplied wasn't of satisfactory quality and that it should be rejected. So I don't need to discuss point this in any detail, other than to say I agree this was the case. I've gone on to consider whether Lex have done enough to put things right.*

*Mrs K says the car wasn't fit for purpose from the outset, so she expected a refund of everything she's paid. But the CRA explains that, when Mrs K exercised her right to reject the car, she was entitled to a refund of anything she'd paid for a period of hire she didn't get. I've considered whether Lex complied with that requirement.*

*Although Mrs K had problems with the car, I've seen evidence showing it had travelled more than 1,400 miles by the time it was collected. Lex provided a courtesy car for her to use while the car was being repaired, so I'm satisfied she had the use of a vehicle from 29 October 2021 to 28 February 2022. And I think it's fair for Mrs K to pay for that period of use.*

*Lex have provided a copy of the hire agreement Mrs K signed, which sets out the costs of hiring the car. I've seen Lex agreed to provide the car for a minimum period of 48 months. For that hire period, Mrs K was required to pay an initial rental of £2,948.26, followed by 47 monthly instalments of £491.38.*

*Lex have explained that the initial rental covered the first monthly rental payment, plus a "spread payment". They've said the spread payment is applied equally over the contract term to reduce the customer's regular monthly payments.*

*I can see that, if Mrs K had kept the car for the full 48-month period, the total amount payable would have been £26,043.12. So, although the payments weren't spread evenly, I'm satisfied the cost of the car worked out at £542.57 per calendar month.*

*Mrs K paid the initial rental and three monthly payments, so she'd paid £4,422.40 in total. After the car was collected, Lex initially refunded her £2,200.96, followed by another £51.18. So, this means she paid a total of £2,170.26 for four months' use of the car. I'm satisfied this is the amount I'd expect Mrs K to be charged - working out at £542.57 per calendar month. So, I don't think Lex needs to do anything further here.*

*Mrs K says she wasn't able to use the car for three weeks whilst faults were being repaired, during which time Lex gave her a courtesy vehicle. They paid Mrs K £67.85 as compensation for this not being a like-for-like replacement, plus £100 to cover additional fuel charges she incurred by having to buy petrol. Mrs K said petrol for the courtesy car cost her almost £70. So, I think Lex have acted fairly and reasonably here.*

*Mrs K has told us that she felt very angry and stressed at being told to return the courtesy car once the repair was complete. The records Lex have provided show Mrs K was told the car was ready for collection on 4 February 2022. I can appreciate this would have been distressing for her. But I'm satisfied that she didn't have to worry about this for very long, because three days later Lex agreed the car should be rejected and advised Mrs K how to arrange collection.*

*I can understand Mrs K's reluctance to drive the car again after it was repaired. The evidence I've seen shows she told Lex she wanted to reject the vehicle on 24 January 2022. I've given careful thought to whether they've treated her fairly here.*

*But the evidence I've seen shows Mrs K asked whether she'd be allowed to think about Lex's offer of terminating the agreement before she decided to request the collection date of 28 February 2022. So, I'm not persuaded Lex were responsible for any delay in collecting the car and terminating the agreement. And as Mrs K had the option to use the car until the date she'd chosen to have it collected, I don't think Lex had any obligation to provide her with a courtesy car as well.*

*It's clear Mrs K experienced a number of issues with the car during the four months she had it. And although Lex provided courtesy cars for her to use, I can see she's been caused inconvenience each time. This has included having to wait for the car to restart, calling an emergency breakdown service, booking the car into a garage for repair, or getting a taxi home. I can understand how distressing Mrs K found the last breakdown, which happened on a busy road. But Lex have paid £300 for the distress and inconvenience she's been caused - and I do think that's fair and reasonable.*

*Mrs K feels Lex should cover the cost of the charging point she had installed to charge the car, which she says cost her £500. But I think this is likely to be useful for charging another car Mrs K has in the future. So, I don't consider it fair for me to direct Lex to cover this cost.*

*I've seen evidence showing that, on 30 September 2021, Mrs K instructed a broker to set up the 48-month lease agreement with Lex for her – for which the broker charged a fee of £198. But because the car Lex supplied wasn't of satisfactory quality, Mrs K was left without a car after just four months. So, I think Lex should reimburse the cost of the broker's fee.*

*Mrs K says that, having handed this car back, she can't afford to lease an equivalent car. I can understand her frustration here. But I don't think it would be fair and reasonable to hold Lex accountable for this, in this case.*

*For the reasons I've explained, I intend to uphold this complaint.*

*To resolve this complaint, Lex Autolease Limited issued a further cheque to Mrs K for £51.18, taking the total refund to £2,252.16. I think that's fair. So, my decision is that Mrs K should receive this amount;*

*And*

*For the reasons I've explained, I also direct Lex Autolease Limited to reimburse Mrs K £198 for the broker's fee she paid, plus 8% simple interest, calculated from the date of payment until the date of settlement.*

*If Lex consider tax should be deducted from the interest element of the award, they should provide Mrs K with a tax deduction certificate so she can reclaim the tax, if she's eligible.*

I invited both parties to send me any further information or comments they'd like me to consider.

### **Responses to my provisional decision**

Lex didn't make any further comment.

Mrs K remained unhappy about the spread payments. She said she'd understand she'd be expected to pay the full amount that had been agreed in the contract if she'd simply decided to terminate the agreement early, of her own accord. But as Lex had supplied a car that was faulty with a number of problems, she didn't think my decision was correct.

Mrs K provided a copy of the complaint she'd made on 24 January 2022, in which she'd said she didn't want to drive the car again. She said Lex had offered her time to decide whether she wanted to keep the car – and that this wasn't something she'd requested as she was never going to keep it.

Mrs K explained that Lex wanted her to make her direct debit payment in March as usual, without telling her how much of her initial payment they'd be returning to her. But she'd cancelled the March payment, because she felt what they were suggesting was ridiculous.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm grateful to Mrs K for taking the time to respond to my provisional decision. I've given careful thought to the points she's made, but I'm not persuaded that I should depart from my provisional findings. I'll explain why.

In my provisional decision I said I was satisfied that Mrs K had the use of a vehicle from 29 October 2021 to 28 February 2022 - and that I think it's fair for her to pay for that period of use. I explained that I was satisfied the amount Mrs K had paid worked out at £542.57 per calendar month, which is the amount I'd expect her to be charged

Mrs K feels she shouldn't have to pay the full amount set out under the terms of the agreement due to the problems she had with the car. But Lex have paid her £300 for the distress and inconvenience she experienced, a further £67.85 for having to use a courtesy car for three weeks, and £100 to cover the cost of petrol for the courtesy car. I remain of the view that Lex have done enough to put things right here.

Mrs K says she didn't ask for time to decide whether to keep the car - and that she told Lex that she didn't want to drive it again when she raised a complaint on 24 January 2022. But I've seen a copy of their final response to her complaint, dated 7 February 2022, in which they agreed to terminate the contract and advised her she could arrange collection through their website. I've seen no new evidence to persuade me that Lex were responsible for any delay in collecting the car and terminating the agreement.

### **My final decision**

For the reasons I explained in my provisional decision, I uphold this complaint.

Lex Autolease Limited issued a further cheque to Mrs K for £51.18, taking the total refund to £2,252.16. I think that's fair. So, my decision is that Mrs K should receive this amount;

And

I also direct Lex Autolease Limited to reimburse Mrs K £198 for the broker's fee she paid, plus 8% simple interest, calculated from the date of payment until the date of settlement.

If Lex consider tax should be deducted from the interest element of the award, they should provide Mrs K with a tax deduction certificate so she can reclaim the tax, if she's eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 29 September 2022.

Corinne Brown  
**Ombudsman**